

## APPENDIX 5

**Programmatic Agreement  
Among the Bureau of Land Management-Royal Gorge Field Office,  
the Advisory Council on Historic Preservation, and  
the Colorado State Historic Preservation Officer  
Regarding Implementation of the Travel Management Program**

WHEREAS the Bureau of Land Management-Royal Gorge Field Office (BLM-RGFO) intends to administer a travel management program to be detailed in various forthcoming management plans; and

WHEREAS the Area of Potential Effect (APE) comprises the entire BLM-RGFO jurisdiction (all BLM lands in eastern Colorado bounded by the Continental Divide to the west and the boundaries of the State of Colorado to the north, east and south); and

WHEREAS BLM-RGFO administers thousands of miles of roads and trails, ranging from well-maintained gravel roads to user-created trails; and

WHEREAS BLM-RGFO, in consultation with the Colorado State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council), has determined that the Travel Management Program might affect historic properties; and

WHEREAS the BLM and the Council have entered into a programmatic agreement dated May 26, 1997; and Colorado BLM and the Colorado SHPO have entered into a protocol (Protocol) agreement (dated April 29, 1998) streamlining BLM's Section 106 process; and

WHEREAS, the Indian Tribes listed in Attachment 3 were invited to participate in consultation regarding this undertaking and to concur with this Programmatic Agreement (PA), and all tribes have participated in consultation, and the Comanche have agreed to concur with this PA;

WHEREAS, pursuant to Section 800.14 of the regulations, 36 CFR Part 800, which implement the National Historic Preservation Act (NHPA), 16 U.S.C. 470f, Section 106 and Section 110(f) of the same act, 16 U.S.C. 470h-2(f), the entities listed above have been invited to sign this PA;

NOW, THEREFORE, BLM-RGFO, the SHPO and Council agree that the program shall be administered in accordance with the following stipulations to satisfy BLM-RGFO's responsibilities under Section 106 and Section 110(f) of the NHPA for all individual undertakings of the program.

## STIPULATIONS

### I. PLANNING

A. Cultural resources staff will fully participate in the development of travel management plans, and will involve SHPO at the earliest reasonable opportunity.

B. Because of the large number of roads that will be covered by each plan, BLM-RGFO will not be able to complete cultural resources inventories prior to the completion of the plans. Instead, in most cases, cultural resources inventories will be undertaken during the implementation phases of the plans, in response to planned activities such as road closures, route designations, etc. However, if actions in a planning area are required before the plan is completed, compliance with Stipulations II-VI will be completed, as appropriate, in advance of those actions.

### II. TRIBAL COORDINATION

A. Pursuant to Section 101(d)(6) of the NHPA, BLM will conduct government-to-government consultation with interested Indian tribes to identify properties of traditional religious and cultural significance that might be affected by individual transportation plans.

B. BLM will conduct additional consultation with interested tribes, as part of the cultural resources survey process, when a specific concern has been identified during consultation on a travel management plan.

C. BLM will also consult annually with interested Indian tribes regarding the BLM's plans for road maintenance in the following year.

D. BLM will conduct its consultation activities, including documentation, in accordance with BLM's 8160 manual.

### III. CULTURAL RESOURCES SURVEY

Because of the magnitude of the travel management undertaking, along with the very low potential for historic properties in certain areas, BLM-RGFO will determine whether a Reconnaissance or an Intensive cultural resources survey (see Attachment 1 for definitions) is necessary.

A. BLM-RGFO will determine the survey level based on information collected during literature reviews focused on the vicinity of the roads or trails in question, on topographic factors, on the knowledge of the certified professional archaeologist, and on research questions formulated in the most current context

documents. BLM-RGFO will also use the guidelines in Attachment 2 to determine whether a reconnaissance or intensive inventory is needed.

B. The survey strategy may be revised and updated by mutual agreement between the BLM and SHPO, without an amendment to this PA.

C. Where survey is performed, the archaeologist will survey a corridor that extends at least 50 feet on both sides of the centerline of the road or trail. Additional areas may be inventoried where the cultural resource specialist believes alterations in trails or roads, or changes in their use, may result in direct or indirect effects to historic properties outside of the 100-foot-wide corridor. If historic properties are observed or known to be outside the 100-foot-wide corridor, and might be impacted by travel activities, they will also be included in the survey area.

D. BLM-RGFO will follow all identification and evaluation (Section VII) and reporting procedures (Section VIII) in the Protocol agreement.

E. Before BLM-RGFO carries out an undertaking other than the use and maintenance of the road or trail (such as the installation of a cattle guard, changing the route of a trail, or the construction of a new road) on a road or trail that has not been subjected to a cultural resources survey, it will perform an intensive survey in the APE of the undertaking.

F. If a historic property is suffering adverse impacts resulting from the use of a road or trail, BLM-RGFO will immediately take action, such as rerouting traffic or emergency treatment of the site, to protect the property from further damage until consultation activities, pursuant to Section X of the Protocol, are complete. If the affected property may be of traditional religious and cultural significance to a tribe or tribes, BLM will consult with the tribe(s) regarding the proposed treatment of the property.

#### IV. PRIORITIZATION

Because a wide range of roads and trails are present in the APE and are categorized by level of formality and size, when determining the inventory order, BLM-RGFO will place the greatest emphasis on the roads and trails for which the type of use is most likely to adversely affect historic properties. GIS maps of each planning area will be prepared with the appropriate levels indicated.

## ROADS AND TRAILS MANAGED BY BLM-RGFO

	3b (Gravel)	3c (Dirt)	4 (Unim- proved)	5 (4WD)	6a (Trails 48" and wider)	6b (Trails narrower than 48")
Motorized	3	2	2	1	1	1
Non- Motorized	3	3	3	3	2	2

1=high priority; 2=medium priority; 3=low priority

### V. MAINTENANCE ACTIVITIES

A. Before BLM-RGFO performs maintenance activities on a specific road or trail, it will first determine whether a cultural resources survey has been performed. If survey has not been done, BLM-RGFO will follow procedures in Section I above.

B. If a survey has been performed and historic properties have been identified, BLM-RGFO will determine, in consultation with SHPO and the Comanche THPO, whether maintenance activities will constitute an adverse effect. BLM-RGFO will follow procedures and timetables in Section VII of BLM's Protocol Agreement with the SHPO regarding the management of cultural resources under BLM's jurisdiction ("Protocol").

C. If maintenance activities will adversely affect historic properties, BLM-RGFO, in consultation with SHPO and the Comanche THPO, will determine whether avoidance is possible or whether treatment is necessary.

D. If treatment is necessary, BLM-RGFO will complete its mitigation activities before maintenance activities commence, following procedures contained in Section VIII C (3) of the Protocol.

### VI. DISCOVERIES AND EMERGENCIES

A. In the event that potentially eligible properties are discovered during the course of ground disturbance and cannot be avoided, work in the immediate vicinity of the discovery will cease until the resources have been evaluated pursuant to National Register criteria in 36 CFR 60.4.

B. BLM-RGFO will ensure that the historic properties are protected from further disturbance until decisions about treatment are made and treatment is completed.

C. Within 48 hours of the discovery, BLM will evaluate the property for National Register eligibility and, in consultation with the SHPO and any Indian tribe that

ascribes traditional cultural and religious significance to the property, determine an appropriate mitigation option. The BLM will implement the mitigation in a timely manner.

D. The process and results of any mitigation measures implemented will be fully documented in reports, site forms and photographs meeting the Colorado State Report guidelines and Secretary of Interior's Standards and Guidelines. The documentation will be forwarded to the SHPO in accordance with timetables established in Section X of the Protocol. Large-scale projects will include a discovery process in the treatment plan.

E. In the event of natural disasters, fires or other emergency events, BLM-RGFO may take actions to stabilize any involved historic properties and prevent further damage without consultation. Where possible, such emergency measures will be undertaken in a manner that does not foreclose future preservation or restoration, with on-site monitoring by qualified personnel, and advance telephonic notification of the SHPO and any tribes known to BLM-RGFO that may attach religious and cultural significance to the property involved. Emergency response work will be undertaken in a manner to avoid or minimize effects on historic properties. Should historic properties be discovered during emergency repair or response activity, work in the immediate area of the property will cease if BLM-RGFO has determined that a work stoppage at the site will not impede emergency response activities. BLM-RGFO will advise the SHPO and the interested tribes, if any, by telephone of the emergency, the steps being taken to address the emergency, the discovered property and its apparent significance, and a description of the emergency work and potential effects on the discovered property. Within 30 days following this notification, BLM-RGFO will provide the SHPO and any interested tribes with a written report documenting the actions taken to minimize effects, the work's present status and the planned treatment of the property.

## VII. ADMINISTRATIVE STIPULATIONS

### A. RESOLVING OBJECTIONS

1. Should any party to this Agreement or any Indian tribe object to any action carried out or proposed by BLM-RGFO with respect the effects of travel management activities on historic properties or implementation of this Agreement, BLM-RGFO shall consult with the objecting party and the SHPO to resolve the objection. If BLM-RGFO determines that the objection cannot be resolved through consultation, BLM-RGFO shall forward all documentation relevant to the objection to the Council, including BLM-RGFO's proposed response to the objection. Within 30 days after receipt of all pertinent documentation Council shall exercise one of the following options:

a) Advise BLM-RGFO that Council concurs in BLM's final decision regarding the objection, whereupon BLM-RGFO will respond to the objection accordingly; or

b) Provide BLM-RGFO with recommendations, which BLM-RGFO shall take into account in reaching a final decision regarding its response to the objection.

2. Should Council not exercise one of the above options within 45 days after receipt of all pertinent documentation, BLM-RGFO may assume Council's concurrence in its proposed response to the objection.

3. BLM-RGFO shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection. BLM-RGFO's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

4. At any time during implementation of any stipulation in this PA, should an objection to any such stipulation or its manner of implementation be raised by a member of the public, BLM-RGFO shall take the objection into account and consult as needed with the objecting party, the Council and the SHPO to resolve the objection.

B. AMENDMENTS. Any party to this Agreement may request that it be amended, whereupon the parties will consult to consider such amendment.

C. TERMINATION. Any party to this Agreement may terminate it by providing 30 days written notice to the other parties, provided that the parties will consult during that period to seek agreement on amendments or other actions that would avoid termination. In the event of termination, BLM-RGFO shall comply with standard cultural resources survey procedures for roads, which are contained in the Protocol and the SHPO's survey guidelines.

D. FAILURE TO CARRY OUT AGREEMENT. In the event BLM-RGFO does not carry out the terms of this Agreement or if the Council determines under 36 CFR Section 800.14(b)(2)(v) that the terms of this PA are not being carried out, BLM-RGFO will comply with the Protocol with regard to individual undertakings covered by this PA.

E. PERIODIC REVIEW. BLM will request, in writing, a review of this PA by all parties every three years on or about the anniversary of its effective date. At that time, the parties will determine whether the PA will remain as it is, or whether the parties should amend it or whether the parties should terminate it.

F. DURATION. This PA shall become effective upon execution by BLM-

RGFO, the Council and the SHPO and shall remain in effect until terminated in accordance with Stipulation VII C above.

Execution and implementation of this Agreement evidences that BLM-RGFO has afforded the Council an opportunity to comment and has satisfied its Section 106 responsibilities for the Travel Management Program.

BUREAU OF LAND MANAGEMENT

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Roy L. Masinton, Royal Gorge Field Manager

COLORADO STATE HISTORIC PRESERVATION OFFICER

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Georgianna Contiguglia, State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
John M. Fowler, Executive Director

CONCURRING PARTY: COMANCHE TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Johnny Wauqua, Tribal Chairman



## ATTACHMENT 1: DEFINITIONS

**Intensive Survey:** A continuous survey of an entire road segment, aimed at locating and recording all archaeological properties that have surface indications, by walking close-interval parallel transects within at least 50 feet on both sides of the centerline of the corridor, until the area has been thoroughly examined.

**Reconnaissance Survey:** Field survey that is less systematic than intensive field survey. It is based on a combination of information gathered during a literature review and environmental conditions that are conducive to human activities and includes portions of a road segment, but not a road segment in its entirety.

## ATTACHMENT 2: RECONNAISSANCE SURVEY GUIDELINES

I. In order to expedite field survey, the details of the reconnaissance survey strategies will be documented in the survey report, rather than submitted to the SHPO before fieldwork begins.

II. The process of determining whether BLM-RGFO will perform a reconnaissance or an intensive survey will involve the following steps:

A. Literature Review: BLM-RGFO will conduct a literature review of previous surveys that have been conducted in the project area and of sites recorded. If the results of that literature review indicate that:

1. any previous survey has been performed, BLM-RGFO will assess the adequacy of the survey to determine whether the road segment of interest should be re-surveyed. If 15 years or more has elapsed since the previous survey, BLM-RGFO will resurvey the road segment of interest, except where BLM-RGFO is able to justify that previous work was adequate for the present undertaking and documents that justification in the survey report.
2. the road segment of interest has already been intensively surveyed and the BLM-RGFO determines that the previous survey is adequate for the present undertaking, BLM-RGFO will document this finding and follow the procedures in Sections VII and VIII of the Protocol.
3. the road segment, or a portion of it, has not been previously surveyed, the BLM-RGFO shall conduct a field survey of any unsurveyed portion..

B. Survey Intensity: Where, based on the literature review, additional inventory is necessary the BLM-RGFO will determine an appropriate level of inventory based on the following:

1. Intensive Inventory. If the road segment of interest is located in or near an area with high site density, as determined by the professional judgement of the BLM-RGFO archaeologist, BLM-RGFO will perform an intensive survey.
2. Reconnaissance Inventory. Where the road segment of interest is not located in or near an area of high site density, the BLM-RGFO will conduct intensive surveys in only those portions of the area of potential effects for which the following conditions exist. BLM-RGFO will document the decision-making process in the survey report:

## ABORIGINAL ACTIVITIES

- A. Terraces adjacent to drainages
- B. Hilltops and ridgetops.
- C. Road cuts.
- D. Aboriginal features or artifacts are visible.
- E. Overhangs with adequate potential for deposition.
- F. Other environmental variables (e.g., springs) that might be associated with sites in a particular area.

## EUROAMERICAN ACTIVITIES

- A. Locations with economic mineral potential.
- B. Areas adjacent to established settlements.
- C. Locations with a history of ranching.
- D. Areas through which railroads, historic trails or other historic transportation routes passed.
- E. Other environmental variables that might be associated with sites in a particular area.

III. BLM will expand the area of potential effect beyond the 100-foot-wide corridor in the following situations:

- A. A potential historic property is observed outside the corridor and might be adversely affected by the road or
- B. The boundaries of a historic property exceed the 100-foot-wide corridor.

IV. Rather than create individual research designs for each survey, the BLM will draw research questions from the most current context documents that are relevant to the **project area**<sup>1</sup>. In the survey report, BLM will discuss applicable research topics and whether the results of the survey provide any new relevant data.

---

<sup>1</sup> At present, those documents are: Colorado Prehistory: A Context for the Arkansas River Basin by Christian J. Zier and Stephen M. Kalasz, 1999, CCPA; Colorado Prehistory: A Context for the Platte River Basin by Kevin P. Gilmore, Marcia Tate, Mark L. Chenault, Bonnie Clark, Terri McBride, and Margaret Wood, 1999, CCPA; Colorado Historical Archaeology Context by William G. and Nancy B. Buckles, 1984, Denver, Colorado Historical Society; Colorado Southern Frontier Historic Context by Carrol Joe Carter, Steven F. Mehls, 1984, Colorado Historical Society, Denver; Colorado Plains Historic Context, Steven F. Mehls, 1984, Denver; Colorado Mountains Historic Context, Steven F. Mehls, 1984, Denver.

### ATTACHMENT 3: TRIBES CONSULTED REGARDING THIS PA

Apache Tribe of Oklahoma  
Cheyenne and Arapaho Tribes of Oklahoma  
Cheyenne River Lakota Tribe  
Comanche Tribe of Oklahoma  
Crow Creek Lakota Tribe  
Kiowa Tribe of Oklahoma  
Northern Arapaho  
Northern Cheyenne Tribe  
Northern Ute Tribe  
Oglala Lakota Tribe  
Pawnee Nation of Oklahoma  
Rosebud Sioux Tribe  
Shoshone Tribe  
Southern Ute Indian Tribe  
Standing Rock Lakota Tribe  
Ute Mountain Ute Tribe